

No. 12,145

IN THE

United States Court of Appeals
For the Ninth Circuit

W. M. (alias Bill) GILLIS,
(Plaintiff) Appellant,

VS.

BEN F. GILLETTE and IRENE GILLETTE,
(Defendants) Appellees.

REPLY BRIEF FOR APPELLANT.

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Upon careful reading of Appellees' Brief and an examination of the authorities cited, it will be noted that the entire Brief is predicated upon Section 1987 of the Compiled Laws of Alaska, 1933, which was originally taken from the Carter Code of Oregon, which reads as follows:

“Lien Claim to be Filed When. It shall be the duty of every original contractor, within ninety days after the completion of his contract, and of every mechanic, artisan, machinist, builder, lumber merchant, laborer, or other person *save the original contractor*, claiming the benefit of this article, within sixty days after the completion of the alteration or repair thereof, or after he has

ceased to labor thereon from any cause, or after he has ceased to furnish materials therefor, to file with the recorder of the precinct in which such building or other improvement, or some part thereof, shall be situated, a claim containing a true statement of his demand, after deducting all just credits and offsets, with the name of the owner or reputed owner, if known, and also the name of the person by whom he was employed or to whom he furnished the materials, and also a description of the property to be charged with the lien sufficient for identification, which claim shall be verified by the oath of himself or of some other person having knowledge of the facts. (695-CLA; 1-5-15)."

However, the Legislature of the Territory of Alaska later amended the above Section and the Section as it reads now and did at the time of the filing of the Appellant's Lien is as follows (A.C.L.A. 1949):

"26-1-5. Lien Claim: Time and Place of Filing: Contents. It shall be the duty of every original contractor, after the completion of his contract, and of every mechanic, artisan, machinist, builder, lumber merchant, laborer, or other person, claiming the benefit of this article, within ninety days after the completion of his contract or the alteration or repair thereof, or after he has ceased to labor thereon from any cause, or after he has ceased to furnish materials therefor, to file with the recorder of the precinct in which such building or other improvement, or some part thereof, shall be situated, a claim containing a true statement of his demand, after deducting all just credits and offsets, with the name

of the owner or reputed owner, if known, and also the name of the person by whom he was employed or to whom he furnished the materials, and also a description of the property to be charged with the lien sufficient for identification, which claim shall be verified by the oath of himself or of some other person having knowledge of the facts. (CLA 1913, sec 695; am L 1915, ch 5, p 5; CLA 1933; sec 1987; am L 1943, ch 21, sec 1, p 86.)”

It will be noted that in the foregoing amended section “save the original contractor” *has been omitted*, thus giving to the original contractor the benefit of the law which reads “ * * * or if he has ceased to labor thereon from *any cause* * * *” so, under the provisions of the law as it was at the time Appellant filed his lien, and now is, Appellant had a right of lien for his labor performed.

Regardless, however, of the question as to whether or not the Appellant is entitled to a lien for the labor performed under the contract, it appears that he is entitled to a judgment for the balance owing under the contract in the sum of \$1,055.03 (Appellant’s opening brief) and a lien upon the Defendants’ property for *materials furnished* in the sum of \$526.08, the same being *no part of the contract for labor* (Defendants were to furnish all materials—Trans. of Rec. p. 10, par. V; p. 20, par. III).

The trial court gave judgment to the Plaintiff (Appellant) for the materials furnished in the sum alleged of \$526.08 (Trans. of Rec. p. 25, 1) and in his judg-

ment recognized that a valid lien existed (Trans. of Rec. p. 25, 4).

Therefore it appears that the Appellant is entitled to a lien, and a judgment of lien foreclosure, and under the lien laws of Alaska, as pointed out in Appellant's opening brief, it follows that he is entitled to attorney's fees, cost of preparing and filing his lien, costs of action and interest.

Irrespective, however, of the lien laws of Alaska the Appellant is entitled to attorney's fees and costs by virtue of section 55-11-55 A.C.L.A. 1949.

Dated, Nome, Alaska,
June 17, 1949.

Respectfully submitted,

C. C. TANNER,

Attorney for Appellant.